



January 23, 2009

SENATE BILL No. 225

DIGEST OF SB 225 (Updated January 21, 2009 12:49 pm - DI 106)

Citations Affected: IC 32-29; IC 32-31.

Synopsis: Foreclosure and tenants. Requires the owner of commercial or residential real property containing a rental unit to notify the tenants if a judgment of foreclosure is entered concerning the property, and permits a tenant to terminate a rental agreement if a judgment of foreclosure is entered against the owner. Authorizes a tenant to bring a civil action if the owner does not comply with the notice provisions, and provides that a tenant who terminates a rental agreement early in compliance with the statute does not forfeit the damage deposit due to the early termination, but may still be liable for actual damages. Specifies that the notice provisions do not apply to: (1) commercial leases of more than three years; (2) commercial leases in which the tenant has been named as a defendant in the foreclosure action; and (3) real property where a receiver has been appointed. Makes other changes and conforming amendments.

Effective: July 1, 2009.

**Lubbers, Lawson C, Broden,
Randolph**

January 7, 2009, read first time and referred to Committee on Judiciary.
January 22, 2009, amended, reported favorably — Do Pass.

C
o
p
y

SB 225—LS 7084/DI 106+



January 23, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 225

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-29-7-3.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 3.5. (a) This section applies to real estate that is the**
4 **subject of a judgment of foreclosure under IC 32-30-10-5 if all or**
5 **part of the real estate is leased or rented. However, this section**
6 **does not apply:**

7 (1) to a rental agreement for dwelling units located in
8 Indiana;

9 (2) if the tenant or lessee is named as a defendant in the
10 foreclosure action;

11 (3) if the real estate is leased for a period of more than three
12 (3) years; or

13 (4) if a receiver is appointed under IC 32-30-5.

14 (b) This section applies to rental or lease agreements entered
15 into, extended, or renewed after June 30, 2009.

16 (c) Not later than ten (10) days after the judgment of foreclosure
17 on real property described in subsection (a) is entered, the owner

SB 225—LS 7084/DI 106+



C
o
p
y

of the real property shall provide each tenant or lessee with written notice of:

- (1) the judgment of foreclosure; and
 - (2) the rights of the tenant or lessee under this section;
- by registered or certified mail.

(d) A tenant or lessee of real property described in subsection (a) has the right to terminate the rental or lease agreement upon written notice delivered to the landlord or owner. Termination of a rental or lease agreement under this subsection is effective on a date established by the tenant or lessee, but not earlier than:

- (1) ten (10) days after the tenant or lessee receives the written notice described in subsection (c); or
- (2) ten (10) days after the date the judgment of foreclosure is entered, if the tenant or lessee does not timely receive the written notice described in subsection (c).

(e) A tenant or lessee who terminates a rental or lease agreement under this section is liable for all rent and other charges due under the rental or lease agreement to the effective date of termination, in an amount that is prorated to the effective date of termination. Rent due under this subsection is payable at the time it would have been payable under the terms of the rental or lease agreement being terminated.

(f) Except for the rent and other charges payable as described in subsection (e), a tenant who terminates a rental or lease agreement under this section is not liable for any other rent or charges solely because of the early termination of the rental or lease agreement. However, a tenant or lessee may be liable for other charges if the tenant or lessee causes damage to the rental premises.

(g) A tenant or lessee may bring an action in any court having jurisdiction to enforce an obligation of an owner or a landlord under this section, or to obtain a remedy for the owner's noncompliance. If the tenant or lessee prevails in an action brought under this section, the tenant or lessee may recover:

- (1) actual and consequential damages;
- (2) reasonable attorney's fees and court costs; and
- (3) reasonable relocation expenses.

(h) A waiver of this chapter by a landlord or current or former tenant or lessee, by contract or otherwise, is void.

SECTION 2. IC 32-31-3-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. A security deposit may be used only for the following purposes:

**C
O
P
Y**



(1) To reimburse the landlord for actual damages to the rental unit or any ancillary facility that are not the result of ordinary wear and tear.

(2) To pay the landlord for:

(A) all rent in arrearage under the rental agreement; and

(B) rent due for premature termination of the rental agreement by the tenant. **However, this clause does not apply to a rental agreement terminated in accordance with IC 32-31-8-7.**

(3) To pay for the last payment period of a residential rental agreement if a written agreement between the landlord and the tenant stipulates that the security deposit will serve as the last payment of rent due. **However, if a rental agreement is terminated in accordance with IC 32-31-8-7, this subdivision applies only to the prorated rent due, if any.**

(4) To reimburse the landlord for utility or sewer charges paid by the landlord that are:

(A) the obligation of the tenant under the rental agreement; and

(B) unpaid by the tenant.

SECTION 3. IC 32-31-8-1, AS AMENDED BY P.L.62-2008, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) Except as provided in **section 7 of this chapter or in** subsection (b), this chapter applies only to dwelling units that are let for rent under a rental agreement entered into after June 30, 2002.

(b) This chapter does not apply to dwelling units that are let for rent with an option to purchase under an agreement entered into before July 1, 2008.

SECTION 4. IC 32-31-8-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) **This section applies to rental agreements entered into, extended, or renewed after June 30, 2009.**

(b) **This section applies to real property containing one (1) or more rental units that is the subject of a judgment of foreclosure under IC 32-30-10-5. However, this section does not apply if a receiver is appointed in the foreclosure action under IC 32-30-5.**

(c) **Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (b) is entered, the owner of the real property shall provide each tenant with written notice of:**

(1) the judgment of foreclosure; and

C
o
p
y



1 (2) the tenant's rights under this section;
2 by registered or certified mail.

3 (d) A tenant of real property described in subsection (b) has the
4 right to terminate the tenant's rental agreement upon written
5 notice delivered to the landlord. Termination of a rental agreement
6 under this subsection is effective on a date established by the
7 tenant, but not earlier than:

8 (1) ten (10) days after the tenant receives the written notice
9 described in subsection (c); or

10 (2) ten (10) days after the date the judgment of foreclosure is
11 entered, if the tenant does not timely receive the written
12 notice described in subsection (c).

13 (e) A tenant who terminates a rental agreement under this
14 section is liable for all rent and other charges due under the rental
15 agreement to the effective date of termination, in an amount that
16 is prorated to the effective date of termination. Rent due under this
17 subsection is payable at the time it would have been payable under
18 the terms of the rental agreement being terminated.

19 (f) Except for the rent and other charges payable as described
20 in subsection (e), a tenant who terminates a rental agreement
21 under this section is not liable for any other rent or charges solely
22 because of the early termination of the rental agreement. However,
23 a tenant may be liable for other charges if the tenant causes
24 damage to the rental premises.

25 (g) A tenant may bring an action in any court having
26 jurisdiction to enforce an obligation of an owner or a landlord
27 under this section, or to obtain a remedy for the owner's
28 noncompliance. If the tenant prevails in an action brought under
29 this section, the tenant may recover:

30 (1) actual and consequential damages;

31 (2) reasonable attorney's fees and court costs; and

32 (3) reasonable relocation expenses.

33 (h) A waiver of this chapter by a landlord or current or former
34 tenant, by contract or otherwise, is void.

**C
o
p
y**



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 225, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-29-7-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) This section applies to real estate that is the subject of a judgment of foreclosure under IC 32-30-10-5 if all or part of the real estate is leased or rented. However, this section does not apply:**

- (1) to a rental agreement for dwelling units located in Indiana;**
- (2) if the tenant or lessee is named as a defendant in the foreclosure action;**
- (3) if the real estate is leased for a period of more than three (3) years; or**
- (4) if a receiver is appointed under IC 32-30-5.**

(b) This section applies to rental or lease agreements entered into, extended, or renewed after June 30, 2009.

(c) Not later than ten (10) days after the judgment of foreclosure on real property described in subsection (a) is entered, the owner of the real property shall provide each tenant or lessee with written notice of:

- (1) the judgment of foreclosure; and**
- (2) the rights of the tenant or lessee under this section;**

by registered or certified mail.

(d) A tenant or lessee of real property described in subsection (a) has the right to terminate the rental or lease agreement upon written notice delivered to the landlord or owner. Termination of a rental or lease agreement under this subsection is effective on a date established by the tenant or lessee, but not earlier than:

- (1) ten (10) days after the tenant or lessee receives the written notice described in subsection (c); or**
- (2) ten (10) days after the date the judgment of foreclosure is entered, if the tenant or lessee does not timely receive the written notice described in subsection (c).**

(e) A tenant or lessee who terminates a rental or lease agreement under this section is liable for all rent and other charges due under the rental or lease agreement to the effective date of

C
o
p
y



termination, in an amount that is prorated to the effective date of termination. Rent due under this subsection is payable at the time it would have been payable under the terms of the rental or lease agreement being terminated.

(f) Except for the rent and other charges payable as described in subsection (e), a tenant who terminates a rental or lease agreement under this section is not liable for any other rent or charges solely because of the early termination of the rental or lease agreement. However, a tenant or lessee may be liable for other charges if the tenant or lessee causes damage to the rental premises.

(g) A tenant or lessee may bring an action in any court having jurisdiction to enforce an obligation of an owner or a landlord under this section, or to obtain a remedy for the owner's noncompliance. If the tenant or lessee prevails in an action brought under this section, the tenant or lessee may recover:

- (1) actual and consequential damages;
- (2) reasonable attorney's fees and court costs; and
- (3) reasonable relocation expenses.

(h) A waiver of this chapter by a landlord or current or former tenant or lessee, by contract or otherwise, is void."

Page 2, line 19, after "into" insert ", extended,".

Page 2, line 22, after "IC 32-30-10-5." insert "**However, this section does not apply if a receiver is appointed in the foreclosure action under IC 32-30-5.**".

Page 3, line 7, after "agreement." insert "**However, a tenant may be liable for other charges if the tenant causes damage to the rental premises.**".

Page 3, delete lines 18 through 42.

Delete page 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 225 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

C
O
P
Y

